

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN FLAMER,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	No. 95-3744
	:	
KIM CHRISTIE and	:	
NURSE SUE,	:	
Defendants.	:	

MEMORANDUM-ORDER

GREEN, S.J.

November , 1997

Presently before the court is Defendants Kim Christie and Nurse Sue's Motion for Summary Judgment and Plaintiff's Answer thereto.<sup>1</sup> For the following reasons, Defendants' Motion is granted.

**I. FACTS**

Plaintiff was granted leave to proceed in forma pauperis by Order of this Court dated July 7, 1995. Plaintiff brings this action against the Defendants under 42 U.S.C. § 1983 alleging violations of his civil and/or constitutional rights. Plaintiff alleges in his Complaint that the Defendants falsified information concerning an assault which occurred during the week of January 5, 1995.

According to the deposition testimony of Plaintiff, Plaintiff was treated at Riddle Memorial Hospital for injuries

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<sup>1</sup> Note that this court received a letter filed October 6, 1997 from Plaintiff's attorney in another matter informing the court that Plaintiff is presently incarcerated at Lynchburg City Jail in Lynchburg, VA and that Plaintiff requests that all proceedings related to matters pending in this court be continued until Plaintiff is released from incarceration. As the present action was ready for disposition before Plaintiff's present incarceration, this motion will be decided without further delay.

related to an assault and rape. When Plaintiff returned to the Delaware County Prison, he was placed in the medical ward. (Flamer dep., 2/27/97 at 9, 12-13.) While in the medical ward, Plaintiff woke up and walked into the shower to find that a boy was being assaulted in the shower. (Flamer dep., 2/27/97 at 7.) The following day, the boy would not tell the nurses how he was injured, and plaintiff states that the nurses informed a corporal on duty at the time that the Plaintiff was involved in the incident and wrote the same in an incident report. (Flamer dep., 2/27/97 at 8.) The Plaintiff states that an investigation of the incident revealed that Plaintiff was not involved in the assault. (Flamer dep., 2/27/97 at 10.) Plaintiff also states that Frank Green of security told him that he knew Plaintiff tried to help the boy, but that the defendants did not want Plaintiff at the hospital. (Flamer dep., 2/27/97 at 12.)

Plaintiff alleges that as a result of the defendants' lies regarding the incident in the shower, Plaintiff was transferred to the intake unit which is an isolated holding area where new inmates are housed until they are transferred to a block. (Flamer dep., 2/27/97 at 15; 1/10/97 at 30.) According to the Plaintiff, he remained in the intake unit at least one week until he was transferred to the Philadelphia Detention Center. Plaintiff states that while he was in the medical ward and after he was transferred to intake, his injuries went untreated. (Flamer dep., 2/27/97 at 15.) The medical records from the Health Services Department at the Delaware County Prison show

that the plaintiff's condition was evaluated and noted 17 times between January 7-13, 1995 and that he was transferred to the intake unit on January 13. The records do not reveal any further treatment while Plaintiff was housed in the intake unit. (Defs.' Mem., Exh. E.)

## **II. DISCUSSION**

Summary judgment shall be awarded "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A dispute regarding a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 2510 (1986). The evidence presented must be viewed in the light most favorable to the non-moving party. Lang v. New York Life Ins. Co., 721 F.2d 118, 119 (3d Cir. 1983). Once the moving party has carried the initial burden of showing that no genuine issue of material fact exists, the nonmoving party cannot rely upon conclusory allegations in its pleadings or in memoranda and briefs to establish a genuine issue of material fact. Pastore v. Bell Telephone Co. of Pa., 24 F.3d 508, 511 (3d Cir. 1994). The nonmoving party, instead, must establish the existence of every element essential to his case, based on the affidavits or by the depositions and admissions on

file. Id. (citing Harter v. GAF Corp., 967 F.2d 846, 852 (3d Cir. 1992)); see also Fed. R. Civ. P. 56(e).

#### **A. Due Process Claim**

Liberty interests protected by the Fourteenth Amendment may arise from two sources -- the Due Process Clause itself and the laws or regulations of the States. Layton v. Beyer, 953 F.2d 839, 842 (3d Cir. 1992). The Due Process Clause of the Fourteenth Amendment does not give a prisoner a liberty interest in remaining among the general prison population. Sheehan v. Beyer, 51 F.3d 1170, 1175 (3d Cir. 1995) (citing Montanye v. Haymes, 427 U.S. 236, 242, 96 S. Ct. 2543, 2547 (1976)). Due process protection for a state created liberty interest is limited to those situations where deprivation of that interest "imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." Griffin v. Vaughn, 112 F.3d 703, 706 (3d Cir. 1997) (quoting Sandin v. Conner, 515 U.S. 472, 484 115 S. Ct. 2293, 2300 (1995)).

In the present case, Plaintiff had no liberty interest under the Due Process Clause of the Fourteenth Amendment in remaining in the medical ward. Plaintiff's procedural due process rights under the Constitution were not violated in the failure to give Plaintiff a hearing prior to his transfer to intake. Furthermore, the transfer of Plaintiff from the medical ward to the intake unit did not impose on him "atypical and significant" hardship, and therefore, Plaintiff was not deprived of any state created liberty interest. Taking the evidence in the light most

favorable to the Plaintiff, Plaintiff has failed to state sufficient facts to create a genuine issue of material fact concerning a denial of due process under the Constitution of the United States.

#### **B. Eighth Amendment Claim**

The Eighth Amendment prohibits punishments which involve the unnecessary and wanton infliction of pain such that the punishment does not comport with the basic concept of human dignity. Gregg v. Georgia, 428 U.S. 153, 173, 96 S. Ct. 2909, 2925 (1976). Where a plaintiff claims a denial of medical treatment, the plaintiff must demonstrate a deliberate indifference to serious medical needs. Estelle v. Gamble, 429 U.S. 97, 104, 97 S. Ct. 285, 291 (1976). Deliberate indifference has been defined as subjective recklessness, or the actor's conscious disregard of substantial harm that may result from his or her action. Farmer v. Brennan, 511 U.S. 825, 839, 114 S. Ct. 1970, 1980 (1994).

In the present case, Plaintiff has failed to produce any evidence in his Answer to substantiate the allegations he set forth in his Complaint. Plaintiff's Answer merely recites the allegations in the Complaint and relies on bare assertions of fact. Plaintiff's Answer does not include any affidavits, depositions, admissions on file or any other evidence to support the assertions he makes regarding his Eighth Amendment claim. Even considering the Plaintiff's depositions of 1/10/97, 2/27/97 and 5/22/97, the deposition testimony, along with the Plaintiff's

Complaint and Answer, still do not produce sufficient evidence of an unnecessary and wanton infliction of pain by the Defendants concerning the Plaintiff's medical treatment or confinement during the time period in question. Therefore, as Plaintiff has failed to show that a genuine issue of material fact exists, Defendants are entitled to summary judgment.

**C. Supplemental Jurisdiction**

The district court may decline to exercise supplemental jurisdiction over any related state law claims if the district court has dismissed all claims over which it has original jurisdiction. 28 U.S.C. § 1367(c)(3). Pursuant to the following Order, all of Plaintiff's § 1983 claims in the present action will be dismissed with prejudice. Therefore, to the extent that Plaintiff has set forth any state law claims, this court declines to exercise supplemental jurisdiction over such claims, and any state law claims are dismissed without prejudice to Plaintiff asserting such claims in state court.

An appropriate Order follows.

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	:	
KIM CHRISTIE and	:	
NURSE SUE,	:	
Defendants.	:	

ORDER

AND NOW, this        day of November, 1997 upon consideration of Defendants Kim Christie and Nurse Sue's Motion for Summary Judgment and Plaintiff's Answer thereto, IT IS HEREBY ORDERED that Defendants' Motion is GRANTED with respect to Plaintiff's § 1983 claims, and Plaintiff's § 1983 claims are hereby dismissed with prejudice. IT IS FURTHER ORDERED that to the extent Plaintiff has set forth any state law claims, these claims are dismissed without prejudice to Plaintiff asserting such claims in state court.

BY THE COURT:

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CLIFFORD SCOTT GREEN, S.J.